

# SENATE . . . . . No. 83

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Susan C. Tucker (BY REQUEST)**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to home care accountability .

PETITION OF:

NAME:

Kevin Wreghitt

DISTRICT/ADDRESS:

5 Mayflower Road  
Andover, MA 01810

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO HOME CARE ACCOUNTABILITY .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

### Preamble

1. This proposed Bill is a companion piece of legislation for Chapter 268 of the Acts of 2006, {Chapter 286 (2006)}, in which established the Personal Care Attendant Quality Home Care Workforce Council under the auspices of the Executive Office of Health and Human Services, through providing amendments to Chapter 118G. This legislation adds amendments to the Personal Care Attendant Quality Home Care Workforce Council Law, Chapter 268 (2006) and adds three sections to Chapter 118G.

2. The Home Care Accountability and Supplemental Act (H-CASA) gives more guidance to the Personal Care Attendant Home Care Workforce Council as to how to provide administrative oversight for the Massachusetts personal care attendant program. It also gives the state mechanisms to supervise the activities of the council. This legislation provides mandates for the adoption of ethical codes, disciplinary procedures, and training opportunities for all involved in the personal care attendant program, regardless of one's position. The Bill also introduces ethical and legal procedures on how to avoid and respond to any corruption involving the council throughout several sections. A new anti-discrimination clause is offered here, as well

16 as new directives for public negotiation. It also covers privacy issues and gives guidance as to  
17 how the council shall protect personal information. Since some consumers are more capable  
18 than others in management of the their own program, a redefinition is offered to delineate who  
19 can be held legally responsible as far as people with disabilities and who are elderly. All this has  
20 been done to raise quality control and program efficiency.

21         3. In this act, the amendments proposed for Chapter 268 (2006) is spread out through  
22 this document. Section 1 of Chapter 268 is covered by sections two through seven of this act  
23 while the amendments proposed for Sections 2 through 3 is found in section eight of this act.  
24 Beginning with Sections 5 through 8, this act proposes 3 additional sections to chapter 118G.  
25 Section 1, of this document offers the findings upon, which this Bill is based. Section 2 defines  
26 terms. Section 3 provides amendments to sections 29-32 of Chapter 118G while specifying the  
27 basic regulations for this act. Section 33 of Chapter 118G found in Section 4 in this act,  
28 discusses administrative audits, while section five covers ethics. Section 6 states rules for  
29 screening and training. Section seven discusses disciplinary procedures. Section 8 produces  
30 section 39 reclassifying sections 34 and 35 of Chapter 118G and attaches all amendments to  
31 Chapter 268 (2006) and mandates them applicable to Chapter 118G and explains other  
32 requirements for this act.

### 33         Section 1. Findings

34         1. The Personal Care Attendant Quality Home Care Workforce Council Law,  
35 Chapter 268 (2006) was progress toward improving the personal care attendant program in  
36 Massachusetts for people with disabilities and seniors who utilize that service.

37         2. The establishment of the workforce council addressed the issue of personal care  
38 attendant's right, through union representation, to bargain for better wages and benefits.

39           3. At present, there is no delineation in the law between consumers who can administer  
40 their own program and ones who rely on surrogacy.

41           4. Personal care attendants ought to be placed on public directories based on  
42 temperament and observable skills, or willingness to learn, not on income level.

43           5. No law governing the personal care attendant program should discriminate among  
44 socioeconomic groups.

45           6. Everyone obtaining personal care attendant services who are responsible for their own  
46 home programs, working as surrogates, attendants, state administrators, or legislators, or  
47 investigators, ought to be held accountable to each other and to the larger society

48           7. There are no disciplinary procedures or ethical guidelines within the system to  
49 respond to, or deter inappropriate behavior.

50           8. There are few mechanisms currently to oversee the activities of the Personal  
51 Care Attendant Quality Home Care Workforce Council.

52           9. More continuing education and training ought to be made available to all  
53 involved, whether it be the recipients of services, personal care attendants, contractors, or  
54 surrogates, in order to maximize quality of care.

55           10. There are few security measures in the state to protect consumers of this  
56 program.

## 57       Section 2. Definitions

58       Amendments to Section 1 of Chapter 268 (2006) and Section 28-33 of Chapter

59       118G

61           1. “Consumer” shall be redefined from Chapter 268 of the Acts of 2006 as a person  
62 under the age of 18 or with mental defect, requiring a legal surrogate to manage the daily  
63 personal care attendant program.

64           2. “Administrative consumer” shall be defined as a person for whom a  
65 personal care attendant provides personal care services and such a recipient can oversee his or  
66 her own personal care program, as provided by section 31.a found in Chapter 268 (2006).

67           3. “Surrogate” is someone who has the legal responsibility and authority to substitute his  
68 or her judgment on the behalf of a consumer, for the purpose of administering the consumer’s  
69 personal care attendant program.

70           4. “Personal care attendant” or “attendant” or “attendants” is any person(s) who assists  
71 people with disabilities, or seniors or both, complete the tasks of daily living in a private  
72 residence.

73           5. “Personal Care Attendant Quality Home Care Workforce Council” or “workforce  
74 council” or “council” is the sub-agency, under the Executive Office of Health and Human  
75 Services, designated in Chapter 268 (2006) to oversee the statewide personal care attendant  
76 program in Massachusetts.

77           6. “Employee of the council” or “council employee” is anyone who is paid to conduct  
78 council business.

79           7. “Contractor” or “provider” or “service provider” or “human service agency” is any  
80 individual organization or other entity, which offers auxiliary assistance on behalf of the council,  
81 has contracts with the council, or otherwise manages community direct support services to  
82 people with disabilities or seniors in Massachusetts.

83           8. “Complaint” means the filing of a written grievance with the workforce council  
84 against a personal care attendant, administrative consumer, a surrogate, or a contractor.

85           9. “Complaint process” is the series of steps taken to resolve a grievance in the personal  
86 care attendant program.

87           10. “Complaint procedures” are the rules and regulations, which govern the complaint  
88 process set by the workforce council.

89           11. “Disciplinary committee” is the technical advisory committee under the workforce  
90 council that initially investigates, hears, and passes judgment on a complaint.

91           12. “Administrative appeal” or “review” is a hearing in which an appeal is heard  
92 regarding the decision made by the disciplinary committee.

93           13. “Appellate panel” is a group of individuals comprising administrative  
94 consumers, surrogates, and other individuals in the community, independent of the workforce  
95 council, appointed for a term of no more than two years, by the appointing officials stated in this  
96 act equaling a total of seven members. The appellate panel will standby to hear disciplinary  
97 cases a second time and pass judgment on it and possibly overturns the decision by the  
98 disciplinary committee.

99           14. “Administrative audit” is an evaluation of the workforce council, to  
100 ensure quality control and integrity of the sub-agency.

101           15. “Audit committee” is a seven-member group appointed by the state auditor for the  
102 purpose of carrying out an administrative audit on the home care workforce council.

103           16. “Ethics committee” is an advisory board created by the workforce council, which  
104 with its approval, shall design, implement and revise standards of conduct applied to each

individual involved in the personal care attendant program, council members, employees and contractors.

17. “Code of conduct” or “codes of conduct” or “ethics code” or “ethical code” or “code” refers to the document, which is written by the workforce council’s ethics committee, and approved by the nine member board of council, prescribing standards or guidelines for acceptable behavior and best practices for each individual involved in the personal care attendant program. The disciplinary committee or the appellate panel will adjudicate a complaint shall use this document.

18. “Ethical standards” or “standards” or “ethical guidelines” or “guidelines” are the rules, which governs human behavior in the state personal care attendant program and all workforce council activities, prescribed in the ethics code.

19. “Ombudsman” is a person who works with consumers, administrative consumers, family members, surrogates attendants, union representatives and advocates in the community, employed by the council, to mediate any conflicts between individual administrative consumers, consumers, personal care attendants, a family, contractors, or surrogates and shall determine if a complaint should be referred for a council disciplinary investigation and hearing.

20. “Affiliated member” is any individual who works on a disability related committee, board, or organization, serving in administrative capacity, and that person interfaces with the state, or federal government entities, and the organizational body to which a person belongs, receives state or federal funds or both.

21. “Non-affiliated member” is a person that does not serve in administrative capacity, on behalf of a disability related committee, board, or organization that receives state and/or federal funds, and the person does not interface with state or federal governmental entities

128           22. “Personal care attendant directory“ or “directory” is a statewide list of personal care  
129 attendants in order to provide better access to personal care attendants for administrative  
130 consumers and surrogates, as provided by the Personal Care Attendant Quality Home Care  
131 Workforce Council Law, Chapter 268 of the Acts of 2006.

132           23. “Continuing education and screening committee” is an advisory board of the council  
133 charged with the responsibility of developing, implementing and maintaining a statewide  
134 personal care curriculum and overseeing screening clinics to qualify individuals for the personal  
135 care attendant directory.

136           24. “Screening clinic” is an event sponsored by the workforce council, which allows  
137 administrative consumers and surrogates to interview prospective individuals who wish to be on  
138 the personal care attendant directory.

139           25. “Counsel member” or “members” or “member” refers to anyone who serves  
140 on the workforce council or its advisory committees for a specified period of time.

141           26. “Appointing officials” or “officials” are individuals of authority in state government  
142 who appoint people in the community who are representative of the population with disabilities  
143 and elderly, as members of the main board and certain subcommittees of the Personal Care  
144 Attendant Quality Home Care Workforce Council.

145           27. “Nominating agencies” are governmental or related organizations, which are  
146 charged with the responsibility of selecting potential members to the council and submitting the  
147 names to the appointing officials.

148           28. “Personal relationships” or “personal relationship” is any social, business or  
149 other type of interaction with two or more individual(s).

150           29. “Conflict of interest” is any personal relationship or interest outside the



confines of the council, which may unduly influence a member's judgment regarding any or all issues before the council or its advisory committees or the relationship confuses social or professional boundaries.

30. "Corruption" is any conflict of interest, fraud, deception, or other unlawful act committed by members of the council, public officials, or other persons or entities, which adversely interferes with the functioning of the council or the state administration of the personal care attendant program.

31. "Appointment cycle" is a single instance of an official assigning an individual for a specified term on the council or an associated advisory committee.

32. "Independent disciplinary committee" is a board of seven individuals from the community representing the population needing services, which take the place of the regular disciplinary committee because of conflict of interest.

33. "Alternate members" or "alternative replacements" are the individuals representing the population being served, who can act as substitutes for appointed members on the general board, disciplinary committees, or appellate panels.

34. "Compelling evidence" is any verifiable statement, material, or other types of direct information, which can be cooperated during disciplinary proceedings.

35. "Personal care attendant union" is an organization of personal care attendants in Massachusetts, which exists to collectively bargain with the council for higher wages and other benefits.

36. "Union member " or "union members" are people who have joined the personal care union in order to bargain for increased wages and benefits.

38. "Union representative" is any member of the personal care attendant union

or other staff member of the Service Employees International Union, Local 1199.

39. "Union operations" refers to the practices associated with the administration of the personal care attendant union under the auspices of the Service Employees International Union, Local 1199, and includes such functions as union sponsored events, mailings or written communication of any type, phone calls, word of mouth communication, fundraising or due collection, staff meetings, board meetings, or any negotiations with the workforce council.

40. "Union abuse" or "union harassment" or "harassment" is any act committed by any leader, representative, or member of the personal care attendant union, designed to coerce, pressure, deceive or intimidate members of the public to join their union, collect dues, support the union, or use manipulative tactics with the council during contract negotiations, or using personal information of attendants, administrative consumers, consumers, or surrogates, either with or without assistance from other people or entities, to gain some advantage over the system or the public.

41. "Contact" or "approach" is when a union representative or member attempts to interact with another member or potential member for recruiting or other business purposes, or other entities providing the union with confidential information unlawfully.

42. "Responsibility" is the act of following laws and ethical guidelines, regarding the personal care attendant program in Massachusetts and demonstrating a good faith effort to improve the quality of care, or taking on an obligation to complete certain tasks.

43. "Theft" is one or more instance(s) of stealing of money or personal property equaling any monetary value.

195           44. "Removal" is a temporary suspension from workforce council duties for members of  
196 the main board, subcommittee members, or employees of the workforce council, who are under  
197 disciplinary investigation.

198           45. "Termination" is permanent suspension from workforce council duties for members  
199 of the main board, subcommittees, or employees who receive a finding of a violation of council  
200 rules and ethical guidelines, from the disciplinary committee and is not over turned over on  
201 appeal, or is the procedure used by administrative consumers or surrogates to relieve someone of  
202 their personal care attendant responsibilities.

203           46. "Abandonment" is a criminal act of neglect committed by a  
204 personal care attendant, when he or she fails to report for duty without notifying the  
205 administrative consumer, or surrogate in a timely maner with a reasonable explanation, or not  
206 returning to work without notice, or leaving work spontaneously without completing the shift.

207           47. "Physical abuse" is any criminal act, which is purposeful in nature, meant to  
208 cause bodily harm to someone else through assault and battery, food poisoning or poisoning with  
209 other substances, such as drugs, alcohol, or other items.

210           48. "Psychological abuse" is any criminal event or aggressive language meant to  
211 adversely affect a persons mental state through making the victim have the perception of being  
212 fearful, unsafe physically or psychologically or both, or depressed or unworthy, or some adverse  
213 behavioral change occurs secondary to the perpetrator's actions.

214           49. "Threat" is a form of psychological abuse, in which a statement is made,  
215 through any form of communication, describing a future event of danger to a victim, and there is  
216 likelihood that the one making such a comment has the ability to carry out the said act.

217           50. "Sexual abuse" is a criminal act of touching to sexual parts of the body, the

touching is inappropriate to the situation, is not consented to and is not apart of routine personal care, or is an instance of non-consensual intercourse.

51. "Neglect" or "negligence" is an criminal act of omission, by not giving care or support, or failure to follow through on one's obligations, and, in all cases causes actual or potential harm to another person, either physically or psychologically or both.

52. "Direct abuse" or "primary abuse" is any criminal abusive or neglectful act defined in this section, in which, the abusive behavior is committed onto a victim by the perpetrator.

53. "Indirect abuse" or "secondary abuse" is any criminal abusive or neglectful act defined in this section, in which, the person perpetrating the abuse does so through other people, or places the victim in situations, where it is foreseeable that the victim may be harmed.

54. "Sexual harassment" is any criminal abusive act, through sexually explicit language or inappropriate touching, or other innuendo, which produces uncomfortable situations or hostile work or living environment for the intended victim.

55. "Criminal act" is any inappropriate behavior, which warrants arrest, criminal court proceedings, such as indictments, pretrial hearings and jury or bench trials in a criminal court of law, with imprisonment or financial fines, or both being possible.

56. "Family member of people with disabilities," or "family members of those with disabilities," is any relative of a person with physical or mental impairment, or both.

57. "Sanctions" or "penalties" are consequences, which are decided by the council disciplinary committee or a court when a person has been found in violation of the council code of conduct or the law or both.

240           58. “Independent living centers” are agencies, which assists people with disabilities live  
241 to independently in the community.

242           59. “Fiscal intermediaries” are agencies, which provide assistance with the personal care  
243 attendant payroll responsibilities.

244           60. “Personal information” is data, which identifies an individual or their  
245 characteristics, such as identification numbers, contact information, work hours, direct  
246 experience, or any other information, which are features of an individual.

247           61. “People with disabilities“ or “elderly” are individuals with physical or  
248 mental impairment, or both, which limits daily functioning in some manner, requiring personal  
249 care attendants or the person with such conditions and care requirements are at the age of 65  
250 years or older.

251           62. “Confidentiality” or “confidential” is the act of keeping information private  
252 and not allowing any disclosures to other people.

253           63. “Entity“ or “entities” refers to one or more organizations, which are  
254 involved in the personal care attendant program in Massachusetts.

255           64. “Fraud” is any instance of financial corruption by an organization including  
256 manipulation, efforts to conceal earnings, over charging union member dues or inflating others  
257 income, or any other type of financial misconduct intended to unlawfully profit from such acts.

258           65. “Substance abuse” is the act of taking any type of chemical into the body,  
259 through various means, which leads to physical or mental impairment.

260           66. “Recovery” is when somebody remains substance abuse free for at least two years  
261 and who is under the continuing care of a mental health professional or support group.

67. “Illegal alien” or “illegal aliens” are people who come from another country and crossed United States borders without going through the federal legal process and does not carry any official documentation to allow him or her to remain in the United States.

68. “Counsel director” or “director” is the leader of the Personal Care Attendant Quality Home Care Workforce Council.

### Section 3: Basic Regulations

1. Section 29.b – 27-37 The nine member board of the workforce council shall be chosen by the Governor, the Secretary of the Department of Elder Affairs, and the Director of the Massachusetts Office on Disability. This shall be done from a pool of applicants who have applied through various nominating agencies, which will choose possible candidates to be selected for service on the council by the designated public officials. A recommendation form shall be filled out by the nominating agency in support of those individuals, should accompany an application. The council and the Executive Office of Health and Human Services (EOHHS) shall create the form. The application and recommendation form shall be turned over to the official no later than 90 days before the selection is to be made. These officials shall appoint individuals to two and three-year terms.

2. c. The Governor shall choose three individuals – one person from the Governor’s Council on Disability, and one affiliated member and one non-affiliated member from the Disability Policy Consortium. The Director of the Office on Disability shall appoint one non-affiliated member who is a surrogate, family member, or administrative consumer from the Massachusetts Home Care Association, and two affiliated from the Statewide Independent Living Council, which will nominate people from independent living centers across the commonwealth. The Secretary of the Department of Elder Affairs shall choose two from the Massachusetts Council of Aging, one of which has to be a non-affiliated member in the community and one affiliated member from the council or another government sponsored agency in Massachusetts dealing with seniors, and one person from the Developmental Disabilities

Council, which could be either an affiliated or non-affiliated member, perhaps a surrogate and/or a family member of someone needing personal care attendants.

3. d. The person from the Governor's Council on Disability shall serve a term of two years while one person from the Disability Policy Consortium shall serve two years and the other person in the same organization shall serve three years. The Massachusetts Home Care Association shall nominate one individual to a term of three years. The nominees from the Statewide Independent Living Council shall nominate one person to serve two years while one individual shall serve three years. The Massachusetts Council on Aging shall nominate one person to serve two years while the other individual serves three years. The Developmental Disabilities Council shall nominate one person for a three-year term. The council and the agencies listed shall make the public aware of council vacancies six months in advance through the statewide press and disability publications and shall include information on how to apply for such a post. If a vacancy appears before a term is up, the agency or organization, which nominated the first person must nominate a second person to the official who made the original appointment. The official shall make the appointment within 60 days of the vacancy and re-appointments to the council, in that case, are possible under the discretion of the official.

4. e. Each official, under his or her discretion, may appoint one candidate, not nominated by the other nominating agencies, in each appointment cycle. Such candidates shall fill out the standard application form and be recommended by another Massachusetts citizen with anti-corruption rules, cited below, being applicable. Applicants for positions on the council shall not have personal relationships with their appointers, their nominators, the personal care attendant union, or any other type of relationship, which would create a conflict of interest. Any appointing officials, council members, council employees, common citizens who may have outside knowledge of such conduct, can make reports of based on paragraph five e in this section, or investigations of such discoveries of such behavior, from media reports, shall be initiated by Attorney General. If the discovery of corruption is made on the council level, procedures found below shall be followed. When new members are appointed to the

council, individuals or contractors are hired by the council, or those who wish to have other types of association with the council, every named entity shall sign an agreement, upon pains of perjury to follow council's ethics guidelines and such a process shall be repeated with every release of a revised version of a code within 90 days of a new version of it being adopted by the council. Issues of conflicts of interest or corruption shall be covered in the ethics code and ethics training for all workforce council members and employees shall occur once a year, conducted by an ethics instructor. The statutory requirements for nominating all candidates shall be that such individuals have to have normal intellect, have to be of the age of majority of 18 years or older, shall not be a personal care attendant, shall have a disability or shall be related to someone with disability, shall be a surrogate, or represent the community with disabilities in some other manor. Appointing officials shall make appointments known through the statewide press and disability publications. Upon enactment of this act, this new arrangement shall be in effect for the next series of appointments and shall run concurrently thereafter.

5. f. If there are instances of corruption such as conflicts of interest, or violations of confidentiality on the council, the member(s) involved shall be removed pursuant to Section 7, paragraph 13m, of this act, at least during investigations. Any Massachusetts citizen with knowledge of such occurrences must report it to the counsel director. From there, the director will discuss the matter with the council's attorney and the Assistant Secretary for Disability Affairs at the EOHHS. If this group finds that state laws may have been violated, the suspected member shall be suspended and the Attorney General shall be called in for further review and such a process has to occur within 90 days. In such a case, the Attorney General shall appoint the Commissioner of the Massachusetts Rehabilitation Commission to select an alternate replacement for the council, for the time being, from nominating agency of his choosing other than those described. If the Attorney General finds there was corruption, the accused member will be terminated from the council and prosecuted. The permanent replacement shall be appointed as usual in the next appointment cycle. The Commissioner of the Massachusetts Rehabilitation Commission shall name a maximum of to three replacements, in case of multiple people



involved with corruption at the same time. In case more than three members and their respective nominating agencies and officials being involved in conflicts of interest situations, the Attorney General shall choose the Secretary of the Department of Veterans Affairs to appoint a maximum of three alternate replacements and the Commissioner of the Department of Public Health to appoint a maximum of three alternate replacements. Active alternate members cannot be chosen in the council regular appointment cycle. Whatever is required to stabilize the integrity of the council is under the discretion of the council attorney and the council director while the matter is being investigated, except when it comes to having the authority to removing or replacing the later person because of possible wrongdoing. Once the investigation is over, the authority to appoint members to the council will return to the standard officials and nominating agencies or organizations, unless there is legislative intervention to create other arrangements. If the member is cleared of wrongdoing, by all investigative entities, the member can continue serving, if there is still time in the term, and the substitute will relinquish the post in such a case, or the substitute will finish the term. As for the director, the Assistant Secretary for Disability Affairs at the Executive Office of Health and Human Services and the council attorney will decide if the matter should be reported to the Attorney General. If so the Assistant Secretary and EOHHS, Disability Division, under such circumstances, shall suspend the director, pending an investigation and become the acting director of the council until the corruption issues are resolved. If there was corruption committed by the council director, a replacement shall be named within 90 days after that point. The original director can also be reinstated immediately, after being exonerated of all wrongdoing, if he or she desires.

6. g. The oversight for the council shall come from three sources: One, the Auditor shall conduct a biannual administrative audit, which is established in Section 4. Two, the Joint Committee of Health and Human Services shall officially assume oversight responsibilities for the council activities in the Massachusetts legislature and may perform independent regular or emergency investigations. Three, the Joint Committee of Health Care and Finance shall perform regular three-year reviews of the council budget and any emergency budgetary requests regarding workforce council

361 funding. To assist with that function, the director of the workforce council shall write brief progress  
362 reports to members of those two committees and answer any questions from those legislators. The rest of  
363 the oversight regulations are explained in section four of this act.

364           7. Section 30.a – 72-75: The workforce council will not discriminate on the  
365 basis of gender, ethnicity, minority status, or income level, when recruiting for the personal care attendant  
366 directory.

367           8. Section 30.c – 92-95: For the purposes of this act, the council must not place any personal  
368 care attendant in the personal care attendant directory without their knowledge, understanding, and  
369 written authorization, prior to listing. The workforce council or its contractor responsible for the  
370 directory must explain in writing the required standards for inclusion to be in the directory and have a  
371 person assigned to answer questions if needed. There must be a procedure to remove a person's name  
372 from the directory and this process must be explained at the time of consent. Even though the  
373 Commonwealth of Massachusetts has the right to furnish the names of all personal care attendants in the  
374 state to the council, the council shall not place those names on the personal care attendant directory  
375 without permission from the individuals. The council has 18 to 24 months, upon enactment of this act, to  
376 secure permission from the present members on the directory already and for those that refuse to give  
377 permission or do not respond to the request, shall be removed from the directory. After this 18 to 24  
378 month period, whenever the procedures are in place, the rule for permission will operate concurrently.  
379 The council shall not share any identities of personal care attendants directly with the union. Since the  
380 directory is a public document and there are indirect ways, in which the union can discover those  
381 identities, the council and the personal care attendant union shall adopt the following policy: All  
382 attendants who wish to sign up to be on the directory have to do so through the directory contractor. If  
383 the attendants become union members first, the union is allowed to instruct the new members how to  
384 place their name on the directory, but the union shall not do it for them and the directory contractor shall

385 follow-up with regular consent procedures. Moreover, unless a perspective union member initiates  
386 contact with the union first, in basic terms, the union cannot approach attendants to become members  
387 without the attendant's permission.

388           9. Add Section 30.d: If the union would like to approach an attendant, the union must send  
389 information about the organization through the mail first. With this information packet, the union must  
390 provide a permission slip asking if the person would like more information, or would like to join. If the  
391 person gives permission to receive further information, the union can contact the individual by mail,  
392 phone, email, facsimile, or in person. The union must give the person their preference on how they wish  
393 to be contacted and union must honor the request and shall not do anything else unless the individual  
394 requests a different type of contact. At that point, the union is prohibited from contacting the person  
395 again unless that individual approaches the union at another time. There is a three-month period, in  
396 which the union can send two initial mailings to recruit a prospective member. During this period, the  
397 union cannot utilize any other form of contact. If the perspective member does not respond or denies  
398 further contact, the union must delete that person's contact information and not contact that person again  
399 unless contact comes from that person.

400           10. e. The union may send out notices to other groups such as administrative consumers,  
401 surrogates, the population of people who are elders or family members who are related to people who are  
402 disabled, unless otherwise notified. No other contact shall be used with those groups, unless initiated by  
403 those people. Every individual has the right to engage with the union, as much or as long, as they want  
404 and to discontinue any association with the union, when and if they desire.

405           11. f. In carrying out the duties and responsibilities of section  
406 30.a-c, the council will observe confidentiality practices. The council will adopt policies for obeying the  
407 federal Health Insurance Portability and Accountability Act (HIPAA, 1996) and other state statutes  
408 regarding the personal privacy of all individuals in the commonwealth. The stated privacy rule in this

section also applies to the consumers and administrative consumers in that all attendants must keep all information regarding those individuals confidential. All attendants must have permission from administrative consumers or surrogates regarding who the attendant can communicate with under the behalf of consumers and administrative consumers and under what circumstances, such as in cases of emergency.

12. g. In addition to the requirements in paragraph eight to 11 of this section, the council must issue a consent form to every administrative consumer, personal care attendant, and surrogate, for the purpose of seeking permission to use their personal information to perform research, data gathering, sharing with other agencies, or for other administrative operations. If permission is not granted, the council cannot use that information publicly, but the council can keep that information in a secure and confidential file. Copies of a non-authorization shall be forwarded to all agencies involved with that administrative consumer, or the consumer based upon the surrogate's wishes, those entities shall not share anymore information with the council. The workforce council shall only use the minimum amount of personal information to accomplish administrative tasks. If a person's information was used in administrative operations before enactment of this amendment, the council shall notify the person in question and disclosing what the information was used for and proper authorization to continue shall be sought. In such a case, the administrative consumer, or surrogate in question does not have ethical or legal recourse against the council, even if they object to prior unauthorized disclosures.

13. h. Legislators and the union can work together on irregularities on the council or other related issues under certain circumstances. For purposes of this act, the council, for the most part, is an independent body in state government, which can make its own judgments unfettered by outside influences. If the union would like the legislature to be involved with certain issues on the council, the issue must be raised first with that council. If the union contacts some legislators, the union must not offer money or other political favors. By the same reasoning, legislators cannot offer the union assistance in return for union support. Other regulations on union abuse in section seven should be followed as well.

434 14. Section 31.a – 97-101 Administrative consumers or the consumer's

435 surrogate retain the right to select, hire, schedule, train, direct supervise the work of, and terminate any  
436 personal care attendant providing services. Administrative consumer or the consumer's surrogate may  
437 elect to receive long-term, in-home personal care services from personal care attendants who are not  
438 referred to them by the council or directory contractor. No outside entity or other regulations shall  
439 interfere with these rights.

440 15. b. Regarding acts of abandonment, the attendant must be absent from work without some  
441 type of communication with their administrative consumer or a surrogate for the next 24 hours, from the  
442 time the missed shift began. If communication is not established, after three attempts from the  
443 administrative consumer, human service agencies or surrogate to reach the attendant, abandonment has  
444 occurred. In the case communication is established, the reason for the absence without providing prior  
445 notice within a minimum of 24 hours, must be a medical emergency, or related event involving the  
446 authorities, accompanied by a doctors note or police report, in the case of a automobile accident, or other  
447 related events. Other reasons for the unexcused absence and whether to accept such reasoning is solely  
448 between the attendant and the administrative consumer, provider, or surrogate. The documentation must  
449 be provided within seven days of a single absence. If the absences continue concurrently or sporadically,  
450 without prior notice, abandonment may have occurred, without further corroborating documentation from  
451 qualified professionals or authorities. In the case of the attendant wanting to resign, unless otherwise  
452 agreed upon between the attendant and the administrative consumer, provider or surrogate, two to four  
453 weeks notice shall be given before the attendant leaves his or her position. Unless other arrangements are  
454 made between the administrative consumer, provider or surrogate and the attendant, the said employee  
455 leaves his or her position less than 14 days, abandonment has legally occurred. Abandonment has also  
456 occurred if the attendant has left a shift without just cause, such as a medical emergency. Being late for  
457 work, however, does not qualify as abandonment.

16. c. Any other type of neglect, or physical, psychological, or sexual abuse, theft or secondary theft, shall elicit a response from the state. This also includes milder, but serious acts of misconduct. Regarding personal care attendants, any type of substance abuse, whether alcohol or other drugs, on or off duty, is strictly prohibited. For these purposes, the council shall establish a code of conduct and disciplinary procedures under sections five and seven respectively. There is also a prohibition against illegal aliens working as attendants in Massachusetts based on federal law and will be detailed in sections five and seven. Political or administrative corruption having to do with the workforce council or union abuse is considered to be illegal behavior under this act, and the consequences for such acts shall also be stated in the present section and section seven. This clause, therefore, has authority over the behavior of administrative consumers, surrogates, contractors, members on the council, subcommittee members associated with the council, workforce council employees, appointing officials and elected political leaders in state government. To prevent criminal acts and improve the quality of services, the council, pursuant to section six in this act, shall prescribe training and screening procedures.

17. d. Any contractors assisting the workforce council in recruiting of personal care attendants, or other human service organizations providing community services to the targeted population, must pay attention to the guidelines set by the council. If an attendant harms a consumer or an administrative consumer, any secondary entity who assisted with the recruitment or hiring of the accused can be held in violation of this act and other criminal laws. This type of behavior shall be considered indirect abuse and shall be handled as a crime under section seven, paragraph 12l under this act. Individuals making recommendations to the council, the directory contractor or to individuals are responsible as far as what they know about the person from prior experience. If it can be proven that a contractor or individual who assisted the person being listed on the directory or being hired independently, knew that the individual demonstrated character flaws, which posed a foreseeable risk or did not follow recruitment procedures correctly, can held to account. In terms of giving references, if the person being asked is aware of potential difficulty, which may arise, the person being asked can either

refuse to give the reference, or explain that they would not recommend that person, but the reference may not disclose the reasons. The principle for this rule is a person cannot deceive an individual asking for a reference on behalf of an applicant, who the reference knows or suspects would commit a crime in the personal care attendant position. If the reference portrays the applicant as somebody other than what they know of that person, this regulation would be violated. If a member or employee of the council was involved, termination or removal is possible. If the applicant is hired anyway, however, despite a reference's warning or gives the applicant no support, and a criminal act occurred with the attendant, the reference in question cannot be held in violation of this regulation.

18. Add to Section 31.e: All negotiations must be carried out in public session. Members of the public however, must refrain from interfering in the proceedings. The council and the personal care attendant union shall make rules regarding public observations. An attorney representing the workforce council shall be present in such negotiations. The union may have legal representation, as well, in such proceedings. The attorneys shall not speak during negotiating sessions, except when legal issues arise, and if necessary, if expeditious legal input cannot resolve the matter within the session, the lawyers can request the parties' recess or break for legal advising. Legal counsel can speak to their respective clients before negotiations begin, in between bargaining sessions and recesses within negotiating sessions, but the attorneys can only comment on legal matters, not on the specific issues pertaining to the negotiation.

19. g. The personal care attendant union shall negotiate with the council in an appropriate manner in that this organization cannot use threats or intimidation as leverage in the process. Peaceful protest is allowed, under certain conditions, discussed in paragraph 21h of this section. This organization must obey section 30d of Chapter of 268 (2006), in that no striking, work stoppage, slowdown, or the encouragement there of, shall occur for any reason. Any type of fraud, from

the union, such as manipulation of financial records, overcharging the membership in dues, or other criminal acts constitutes fraud under state or federal law, is strictly prohibited

20. h. The union is allowed to picket during contract negotiations or when important legislation to the union is being considered. Such protest may occur outside the State House or outside legislator's offices as long as no disruptive behavior occurs within the State House. Other protests can occur outside of buildings where negotiations are occurring observing the same rules and shall not be disruptive to anyone coming out or in of those buildings or the State House. The union members shall not approach anyone in the vicinity for recruiting purposes during those times. All city ordinances shall be obeyed with regard to the approximate distance between a building and the picket line. The union is forbidden from picketing outside provider office's, consumer's, administrative consumer's or surrogate's residences, or committing other acts, which disrupt community life. Such protests shall not be violent in accordance with this act and other laws of the commonwealth. The participation of any member shall not interfere with his or her work schedules with their consumers or administrative consumers.

21. i. If the union would like consumers, administrative consumers, surrogates, or family members of people with disabilities to attend their events, the union has to invite such individuals, and not leave it to the members to elicit the ones they work with to attend such functions. It must be left to the discretion of those individuals outside of the union whether they attend. No attendant shall coerce, pressure, or intimidate consumers, administrative consumers, surrogates, or family members of people with disabilities, in supporting any union initiatives by threatening to resign, refusing to do certain tasks, changing one's temperament, or other tactics designed to elicit support for the union. Union members acting as personal care attendants shall not counsel the consumers, administrative consumers, surrogates, or family members of those with disabilities, even if asked, and must direct them to other union representatives or other people for advice on such matters, because of the conflict of interest. The



union must mail information to administrative consumers, surrogates, or family members of those with disabilities, if they would like to support an initiative. For these purposes, privacy rules for attendants, cited in section three, paragraphs eight d and nine e, shall apply to consumers administrative consumers, surrogates and family members of those with disabilities. Union representatives shall not visit homes or apartments of consumers or administrative consumers to discuss union business with an attendant on duty for any reason.

22. j. The union has no right to collect any information from fiscal intermediaries, human service agencies or independent living centers, regarding personal information of personal care attendants, consumers, administrative consumers, or surrogates. The reverse is also true, in that, such entities cannot approach the union with that type of information. Administrative consumers or consumers shall not be coerced or manipulated into sharing information of attendant hours or any other personal information regarding personal care attendants with union representatives. If administrative consumers, surrogates, or any other person who has such information, makes disclosures to a union representative, willingly or inadvertently, such conversations have to be kept confidential and ought not be used for union operations, either publicly or privately, unless it is consented to in writing by the informant. The informant must only speak about his or her own experience to be useful for union operations. Any reference from one person to a union representative, regarding another person must be ignored by the individual associated with the union, in that he or she cannot pass it along within the organization, in order to be utilized for union business. The union representative cannot confirm such heresy information from the person cited in a conversation, unless he or she comes to the union representative, confirms what was said, and consents in to it writing, being used for union operations. In all cases, the union must eliminate all personal information, except the main facts the organization requires for union operations. If the union acquires information regarding a consumer, it must always come from, and shall be authorized by his or her surrogate. In all cases, the personal care attendant union, through the Service Employees International

Union, Local 1199, shall keep all consent forms, for any personal information, on file for a maximum of the 10 years, for administrative audit purposes.

23. k. The union does not have the authority to influence the administrative consumers or surrogates in the way they work with personal care attendants. The union cannot speak to administrative consumers, or surrogate, or hold them or the state civilly liable in court, on behalf of an attendant, who had some difficulty those particular individuals in accordance with section seven, paragraph 40mm.

24. l. The union must do their part in making sure the people they recruit are appropriate to do personal care work. The union may work with the council and other administrative consumers, providers, surrogates and family members of those with disabilities on how the union can assist in increasing and maintaining the quality of care.

25. m. The personal care attendant union may endorse and contribute to political candidates, if they desire. The union shall not, however, promise money to candidates for their support of a particular union position although the union may contribute money to a candidate without announcing the reason, except in general terms, for doing so before an election. The union also shall not threaten a politician or the opponent with taking votes away if they do not support their initiatives regarding the personal care attendant program. Language of dissatisfaction to a politician can be expressed without mention of financial or vote gain or loss. When the union has a legitimate concern over procedural rules on the council in which case, the union should publicly state their complaint before the Joint Committee on Health and Human Services. No other outside interference should influence the council, but elected officials may assist the union, provided the parties follow section three, paragraph 13h.

26. n. The disciplinary procedures and penalties for any violations of this section shall follow section seven, paragraph 37jj.

577           27. The current content in sections 31.f-g – 134-137 of Chapter 268 (2006), regarding legal  
578 liability is deleted and new language on the subject is introduced in section five of this act.

579           28. o. Section 32.g – 161-162: Pursuant to section one of Chapter 268 (2006), the council may  
580 establish technical advisory committees to assist with the function of the council. This act establishes that  
581 the performance of the council shall be evaluated every three years through an independent team, under  
582 the direction of the Auditor, outlined in section four of this act. There shall be an ethics committee  
583 associated with the council to develop and maintain a code of conduct for members of the council,  
584 administrative consumers, surrogates and contractors, in accordance with section five in this act with  
585 some basic procedures being specified in paragraphs four d and five e in this section. Skills training of  
586 personal care attendants, administrative consumers, surrogates and contractors, based on a statewide  
587 curriculum, shall be developed, implementation and maintained by a continuing education and screening  
588 committee, pursuant to section six. The council shall establish disciplinary procedures and avenues for  
589 appeal regarding inappropriate behavior in the personal care attendant program or its administration  
590 thereof, in accordance with section seven. Moreover, except for the audit team, which is under the  
591 control of the Auditor, this act requires the Personal Care Attendant Quality Home Care Attendant  
592 Workforce Council integrate such committees to collaborate on joint tasks as needed. Procedures for  
593 performing such collaborative work and under what circumstances are to be determined by the council.  
594 Moreover, each of these three committees shall meet once a year to review their own guidelines and  
595 render recommendations to the main board of the council regarding policy and procedures for their own  
596 operations or other issues for those advisory boards. Once policies are passed or amended by the main  
597 board, the committees are free to use such policies for their own purposes.

598           29. p. Section 32.h –163-164: The council may keep records and engage in  
599 research and the gathering of relevant statistics. In completing these tasks, the council shall hire expert  
600 consultants in statistics and relevant methods of research. Any reports from the workforce council, which

601 contain any research or statistics, has to give full credit to those consultants, listing their name(s), area of  
602 expertise, affiliation and contact information. The Personal Care Quality Home Care Workforce Council  
603 shall encourage independent research on the personal care services in Massachusetts by applying for state  
604 of federal grants and inviting scientific researchers to take part in research projects.

605           30. i. The public has a right to inspect any council records or raw data upon request, for which a  
606 report is based. The council must comply unless the release of the information could jeopardize  
607 confidentiality. In such a case, the council shall make every attempt to eliminate any potential risk or  
608 provide a clear and reasonable explanation in writing to the petitioner within 30 days as to why their  
609 request has to be denied.

610           31. r. In a hiring situation, the information the council or contractor administering the directory  
611 gathers on a particular individual can be shared with administrative consumer or surrogates, in the interest  
612 of the safety and  
613 well-being of those being served. It is permissible, upon request, for the council or its provider  
614 responsible for the directory to disseminate whether the council has disciplined a certain attendant, who  
615 has been or is currently on the directory, within 10 years, but the details, of which, cannot be revealed.  
616 Moreover, the privacy rules stated in this section do not apply under the conditions of section seven, and,  
617 for the purposes of paragraph four d therein.

#### 618 Section 4: Oversight Regulations

619           1. Add section 33.e. According to paragraph 28o, section three there shall be oversight of the  
620 council through various state mechanisms. Every third year there will be an administrative audit of the  
621 workforce council through the Office of the State Auditor. The Auditor will appoint seven people from  
622 the community who are either administrative consumers, the elderly, personal care attendants, family  
623 members of those with disabilities, or surrogates with one or two legal and accounting consultants, who  
624 can submit their names to the Auditor directly for consideration or are appointed staff from the Auditor's

office. One personal care attendant shall be chosen for this duty, while the others will be a mixture of the people mentioned. The Auditor shall follow regulations for assignment of alternate members found in section three, paragraph 2c. Council members and the other individuals involved will only know the identity of the members of audit team at the time of the evaluation. The group shall access financial and research consultants to assist the team with their task. The objective of such a review is threefold: (a). To ensure the performance reviews of the council are accurate. (b). To ensure that the council itself is fiscally sound and is operating in an efficient manor. (c). To ensure the council is serving public interest in an ethical and legally responsible manor. The administrative audit shall be done through the use of compelling evidence.

2. f. All workforce council members, their employees, contractors and any other entities associated with the council must cooperate with the investigation. The council must make all records available for inspection. Anyone individual or entities involved in council administration and services must submit to interviews with members of the audit committee. Any service provider, including contractors, the union and any other entities that have contracts with the council shall also make their records available regarding that business relationship. The audit committee has the latitude to decide what documents should be inspected and from where. The immediate focus of the audit committee shall be on the past three years, but the audit committee has the ability to review other administrative audits and take the investigation back as much as nine years, if the audit committee finds the some of the problems stem back at least two audit cycles. Within the nine-year time frame, the audit committee has discretion as to how many additional years they want to go back. This process may include reviews of previous documentation or interviewing past council members, employees, or other outside individuals who had dealings with the council in the targeted time frame.

3. g. The audit committee must report any fraud, ethical or legal violations, or negligence committed by the council board members, employees, or contractors.

4. h. Members of the audit committee must not have been a part of the council or its activities for the past 12 years or had relationships with members of the council. If there is a conflict of interest, the person assisting with the investigation must report it to the auditor and excuse themselves for part of or all of the investigation

5. i. The Auditor can conduct surprise, emergency, and small reviews before the third year at his or her discretion to deter any problems. These mini “spot checks” will focus on one narrow aspect of the operation and shall follow the same composition and rules as stated above in this section. The council and any associates will receive no prior notice to such inspections.

6. j. The report shall be primarily sent to the three appointing officials, the nominating agencies, the Attorney General, the council and will be made available to administrative consumers, surrogates, family members of people with disabilities, personal care attendants and their union. The rest of the public may have access to the report in a manner to be determined by the Auditor.

7. k. This report shall also be sent to the legislative Joint Committee of Health and Human Services and the Joint Committee on Health Care and Finance every third year. Pursuant to section three, paragraph six, the former committee may perform investigations of its own, in cases of corruption, and might recommend additional legislative action to remedy any corrupt situation. The Joint Committee of Health and Human Services Committee has subpoena power and can refer any matter regarding the council to other investigative agencies and perform its own regular reviews and public hearings on council performance. Legislators on the two cited committees cited in this paragraph may attend council meetings periodically to provide additional oversight and support. Again, pursuant to section three, paragraph six, the council shall provide quarterly reports to the committees through the director.

8. l. Administrative audits shall take 90 days to complete, but the Auditor can take an extra 20 days to finish the process if there are complications, such as illness or corruption of members. The first administrative audit shall take place within 18 to 24 months following the passage of this act.

Section 5: Ethics

Additional amendments to section 1 of Chapter 268 (2006)

1. Add section 34.a. In accordance with section three, paragraph 28o, the workforce council shall establish an ethics committee in order to establish a code of conduct for administrative consumers, surrogates, attendants and contractors. Within six months of this act being established, the council will appoint seven-member ethics committee. Two members will be from the council and five will not be involved with this sub-agency. Two members must be personal care attendants and five shall comprise some combination of people with disabilities and family members of people with disabilities, the elderly, or surrogates. The director will appoint all ethics committee members for a three-year term. Such a committee will establish a code of conduct, which will have information on how to conduct council business and activities, administrative consumer, surrogate and personal care attendant behavior and outside contractor and agency protocol when working within the personal care system and with regard to relating to the workforce council. The workforce council shall hire an expert on ethics and appoint the attorney from the council to be technical advisors to work with the council ethics committee with the development, implementation and maintenance of the code. These guidelines shall be revised every seven to ten years at the discretion of the workforce council. Before adopting any version of the ethics code, the council will make it available to the segment of the public affected by these guidelines and have a three-month comment period prior to final adoption by the council. Any new versions of the code shall go into effect 90 days after council adoption, while the public is notified. The ethics committee will serve to gather research on ethical issues in personal care and public policy. The guidelines should be clear about what is acceptable, but should not reduce administrative consumer control or interfere with the relationship between service providers, people with disabilities, surrogates and their personal care attendants. Hence, there shall be few activities listed in the code as violations, which personal care attendants, providers, consumers or administrative consumers and surrogates cannot partake in, as long as those tasks increase function and quality of life for those with disabilities.

2. b. The ethics committee and the council may elect to adopt already established standards from other organizations, in part or whole, as long as those guidelines are relevant to, or can be revised for personal care issues, and the council obtains permission from that organization to use the material.

3. c. Any personal care attendant or surrogate who lives in a surrounding state is not excused from following the code of conduct if their administrative consumer or consumer resides in Massachusetts.

4. d. The council shall mail out copies of the code, once it has been approved to all administrative consumers, surrogates, human service agencies and attendants in Massachusetts.

5. e. Upon enactment of this act, the council shall have six months to establish the ethics subcommittee, and, from that point, the committee shall have 18 to 24 months to develop the first ethics code and with public comment, the code shall be approved three months later. If public comment is overwhelmingly negative to a new version of the ethics code, at the discretion of the council, the ethics committee may re-draft the code, in part or whole, within a certain time frame specified by the council and the process shall continue until public reaction is mostly positive, for which, the council shall decide on a criteria. The public may also comment throughout the development of any version of the ethics code. This adoption and public comment process shall be initiated whenever the ethics code is being revised and its adoption is being sought. The drafting and development of any version of the code, therefore, shall be made public knowledge by methods to be determined by the council.

## Section 6: Screening and Training

1. Add section 35.a. Based on paragraph 28o of section three in this act, the council shall provide training for all council members, employees, administrative consumers, surrogates, and contractors in different content areas. The council shall establish a continuing education and screening committee comprised of volunteers, which will assist the council devise standards for continuing



education, establish content areas of knowledge, adjust curriculums, monitor educational outcomes and maintain or adjust screening criteria for the directory. This committee shall develop and implement strategies to educate administrative consumers, surrogates, the elderly, family members of people with disabilities and the general public in Massachusetts regarding the disciplinary guidelines outlined in section seven of this act. These committee members shall serve three-year terms appointed by the director of the council and interested individuals within the disability population or family members of a person with a disability, personal care attendants, or persons who are elderly, shall apply to the EOHHS in a manner consistent with section three, paragraph 2c of this act. Two members shall come from the council, two shall be personal care attendants, and three shall be some combination thereof. Educational consultants shall be provided as advisors to assist with the development, implementation and the maintenance of the curriculum.

2. b. Each individual who wants to be part of the directory must comply with the following requirements:

3. c. Each candidate has to fill out a basic job application, which will be kept on file with the council or contractor administrating the directory

4. d. Every candidate must have a Criminal Offence Record Investigation, Sexual Offender Record Investigation and a cross-reference with Homeland Security terrorist watch lists, completed by the contractor developing and maintaining the directory. The associated contractor given responsibility for the directory must follow title 8, section 1325 of the United States code and refrain from recruiting illegal immigrants. In doing so, the contractor must cross-reference each interested individual with the United States Customs and Border Protection agency and the United States Immigration and Customs agency. When this legislation is enacted, the directory contractor shall be required to complete all background checks herein on all personal care attendants already on the directory within six months. Any attendants who do not pass these background checks shall not be placed the directory. If there is a directory all

ready in place by the time this act is passed and implemented, those on the directory have to be screened for citizenship status and terrorist ties. If there are irregularities found on attendants, such persons must be unlisted within 30 days of the finding. The contractor with the directory responsibility and the council is obligated to inform law enforcement and cooperate with those agencies if there are people who pose a threat to the safety of the community or is a national security threat. The contractor shall follow these procedures every time it finds there is a person who made it on the directory who should not be there because of questionable backgrounds and an oversight occurred when he or she was placed on the directory by mistake. Since paper copies of this of the directories may become out of date because of unlisting requirements in some cases, phone numbers and e-mail contact information shall be provided for administrative consumers and surrogates who want to know if certain attendants are properly listed. In case a web-listing is developed, that version must be kept up to date each week. The council shall supervise all of these activities along with the other reviews discussed. It is because this clause concerns the public safety and wellbeing of those being served, the background checks, presented herein supercedes any right to privacy, cited in section three.

5. e. To enforce the prohibition of substance abuse regarding PCAs, the state, through the council, is required to devise a random substance abuse screening program for all personal care attendants in Massachusetts, on and off the directory within 18 to 24 months of enacting this act. The individuals or organization the attendant works for have a right to automatically receive a report of the results each time a test is done to one of their attendants. The privacy rule found in section three, 32s does not apply here because this is an employment situation, not a hiring situation and the safety of the administrative consumer or consumer has to take precedence. The workforce council and the attendant shall receive the other copies of the results.

6. f. Administrative consumers and surrogates in the community shall interview applicants at a screening clinic, in each region of the state, on a semi-regular basis to be set by the workforce council's continuing education and screening committee for the purposes of qualifying prospective attendants for

the personal care attendant directory. The interviewers must fill out an evaluation form, which will be attached to the application. The interviewers will be volunteers for this duty with travel reimbursement being offered or transportation being arranged by the council, if necessary. In addition to this clinic, all administrative consumers, surrogates and prospective attendants shall be made aware by the council, that other individuals in need may wish to conduct their own interviews with personal care attendants on the directory, in their area, for regular duty, or for emergencies.

7. g. These candidates will, if pre-approved by the screeners, will then obtain training for a specified number of hours to be determined by the council. This act requires these following basic courses be mandatory: CPR/First Aide for all personal care attendants, Ethics of Personal Care and abuse training for consumers, administrative consumers, personal care attendants, and surrogates. The surrogates may take life saving courses under the council as electives. Other content areas shall be developed such as interviewing skills, interpersonal communication and relationships and self-care, but such training is optional. The council must inquire periodically with administrative consumers, personal care attendants and surrogates what electives would be helpful within an assigned time period designated by the council. Non-surrogates shall be allowed to take these courses if they can be identified as having a family relationship to an administrative consumer or consumer.

8. h. Every attendant involved in the Massachusetts personal care attendant program, or are direct care staff working for human service agencies, must receive, at least, one training on personal care ethics during the duration of a current version of the ethics code, in addition to administrative consumers, and surrogates. The first training shall be taken within the first 18 months from the time, of which, a new version of the ethics code is released. The CPR/First Aide re-certification period shall follow standard state regulations. Any other requirements are to be determined by the council.

9. i. The council must make these required classes available to those

793 who do not wish to be part the personal care attendant directory as well. Every individual who serves as a  
794 personal care attendant in the Commonwealth of Massachusetts must take the minimum training, even for  
795 those who are already working as personal care attendants. The exception would be health care  
796 professionals with an active license or certificates in Massachusetts will be excused from most of those  
797 basic workshops, but they will be expected to take the statutorily required training in CPR/First Aide and  
798 ethics, if their last course in those areas is over the time required by the council or the state, or both.  
799 When a person has taken a course to fulfill the curriculum of the workforce council, it is the responsibility  
800 of the individual to report attendance with the appropriate documentation, unless the council has a direct  
801 way to verify if someone took a proticular training, which shall be made clear at the time of registration.  
802 All such records shall be reviewed every three-months by the council, however it wants to execute such  
803 tasks.

804 10. j. Educational accommodations shall be allowed to make training more  
805 accessible and easy to obtain. If one takes a college course that is related to the content areas set by the  
806 council, it could be applied if the student can offer proof to the council that course was completed with a  
807 passing grade. Other formats such as video or internet courses with certain proof of required completion,  
808 is to be specified by the educational regulations set by council. Other learning disability  
809 accommodations shall made available by the council, on an individual basis and if needed, according to  
810 the federal Americans with Disabilities Act (1990).

811 11. k. The council shall provide trainings through independent living  
812 centers, colleges, and direct workshops/conferences sponsored the council or through other entities and  
813 practices. The council shall ensure that all instructors are qualified to speak on their subject matter.  
814 Administrative consumers and surrogates, or family members, can teach some seminars. Medical, mental  
815 health, rehabilitation, business, legal or ethics professionals may teach other workshops.

816 12. l. The council may charge a minimal fee for education events it directly

sponsors up to \$100 per person. The council may assist with financial aid, whether the event is directly sponsored or not, for those who qualify under council guidelines, accept third party payment on behalf of the student, or provide certain training at a lower cost or for free.

13. m. Once this act is passed, the council has six months to establish a continuing education committee and 18 to 24 months to organize a training curriculum with its logistics developed.

#### Section 7: Disciplinary Procedures

1. Add Section 36.a. Pursuant to section three, paragraph 28o of this act, the council shall devise disciplinary procedures and a committee to adjudicate cases before it. There are four groups of people or entities that can be brought before a disciplinary committee for administrative review of a complaint. These groups are as follows: personal care attendants, administrative consumers, surrogates, people directly involved in the workforce council and contractors, or other individuals, which provide assistance in recruiting for the personal care attendant directory. The committee can hear cases where the offence took place at maximum three years prior to the complaint being filed and can include current and previous working relationships. The investigation and appellate process is the same for all groups. Only the definition of compelling evidence shall be used as a guideline during a disciplinary investigation or hearing to judge any information presented. No hearsay evidence or information that cannot be substantiated shall be admissible at any level of the council disciplinary process. The personal care attendant union under the Service Employees International Union, Local 1199, and other individuals or entities of the community that may have influenced illegal or unethical acts in the personal care attendant system, shall not appear before the disciplinary committee of the council, but can be prosecuted by a local District Attorney in state court and the council, through its attorney, shall refer such cases for independent investigation when the council becomes aware of such situations. In all cases, which is before the workforce council's disciplinary committee, or appeared panel, the committee has the right to seek court

intervention, through their legal representative, when and if necessary, to enforce its disciplinary decision.  
It is the code of conduct that will serve to be the standard of any council disciplinary decision,  
investigation or procedure

2. b. The disciplinary committee comprises one member of the main board,  
the legal representative of the council, three personal care attendants and two non-affiliate members from  
the public representing people with disabilities, the elderly, or family members or surrogates who are  
related to an individual who is handicapped. The point of the attorney is to be a legal observer of the  
proceedings and is to advise on all legal matters. The attorney will be present for all disciplinary  
committee hearings, but he or she, will only speak when legal issues arise. One person from the council  
has to be on the ethics committee. The workforce council director will appoint the members to the  
disciplinary committee for a term no more than two years. The professional ethicist who advises the  
ethics committee may also advise the disciplinary committee. Names of non-affiliate members shall be  
derived through a lottery process and the names can be submitted to the EOHHS, which shall be kept on  
file for no more than two years. Such individuals wanting to serve shall provide verification of having a  
disability, being in a family member, who is related to someone who is disabled or has to submit proof  
that the person is currently working as an attendant for somebody residing in Massachusetts. Standards  
for verification are at the discretion of the council. If a member of the disciplinary committee has prior  
personal knowledge of the accused, the complainant, or anyone else appearing before the committee, or a  
previous or current personal relationship, whether direct or indirect, the member must excuse himself or  
herself, because of conflict of interest. The counsel director shall choose alternate members from the  
lottery, cited in this paragraph or by council re-assignment, if one or more primary members cannot serve  
on the regular disciplinary committee in this paragraph, or appellate panel, cited in paragraph 24x. If  
three or more disciplinary or appellate members cannot serve because of conflict of interest, the director  
has to provide the list of alternates to the Attorney General so he can impanel an independent committee  
to investigate and hear a complaint, pursuant to paragraph 17q of this section. The alternate members

shall be present during the investigations or hearings, but cannot express their opinion, or participate in anyway. The Attorney General shall appoint an alternate attorney or ethicist or both, within 10 days of being notified by the council director if said advisors have conflicts of interests regarding a cases before the disciplinary committee. Such contingencies shall also be used with independent disciplinary committees cited in paragraph 17q. It is permissible to have postponements for illness or questions of corruption for up to 30 days. If this involves a committee member, an alternate member shall replace the primary member for the duration of the case, then, if there is a following case, the individuals reverse roles, or the alternate member may retain the primary position for the remainder of the term if the original member cannot continue.

3. c. If an administrative consumer or consumer is harmed, or is in a potential state of danger, caused by the behavior of a personal care attendant; such as physical, psychological, or sexual abuse, sexual harassment, neglect, abandonment, malicious damage to property, theft, an immediate state investigation by the council's disciplinary committee will be initiated, after receiving a complaint from an administrative consumer or his or her surrogate, other acquaintance of the individual or other mandated reporters. The committee has the right to investigate and punish off duty crimes or offenses by any attendant working in Massachusetts, if it presents a clear and present threat to the consumer or administrative consumer, such as going to work intoxicated or becoming arrested after a criminal act; thereby causing abandonment. In all cases, the council shall initiate all investigations promptly and professionally.

4. d. Within 60 days, informal interviews or a hearing or both shall be completed, in which testimony on either side can be offered. The disciplinary committees, regardless of the type, have the right to make the rules as to how hearings are to be conducted and inform all parties in writing at five business days from the date the complaint is received with any other information the council and the disciplinary committee wants to impart. The regular review process with the main board

will set such standards approving of such rules on how hearings should be conducted, pursuant to section 3, paragraph 28o in this act. The disciplinary committee has limited subpoena power in that it can order any documentation or other pieces of evidence concerning the alleged incident and to compel testimony. The final report shall be rendered with the council's decision within 90 days following the complaint being filed. The purpose of this process is to determine if the attendant in question violated any council ethical guidelines and if any administrative recourse is required such as levying financial penalties or taking the accused attendant's name off the directory. A finding of wrongdoing, however, does not equal a legal verdict of guilty in a court of law. Once a decision is rendered, records will be kept under file with the council. The only people or entities, which can have access to sealed information are courts, legal counsel, or legislative committee, by subpoena. No committee or council member shall discuss or profit from the cases they investigate. This applies to people on audit teams or members of the council in that these members cannot speak on the audit or disciplinary cases, or profit from them. If said individuals do commit such acts, the council can terminate current members off their committees or the council or both. The Attorney General may be called in by the attorney for the workforce council and the he or she has the right to sue in state court for any total profits they might have gained and perhaps seek criminal penalties as well under other statutes. The Auditor shall dismiss any current member(s) from the audit team. The Attorney General may sue past members of audit teams, disciplinary committees, independent disciplinary committees, or appellate panels, if they violate confidentiality or profit from the work.

5. e. If a possible criminal act has been found such as abuse or neglect by an attendant, and is reported to the workforce council initially, the council is required within six to 12 hours to refer the matter local District Attorney, the indicated state protective agencies, and the police departments where the alleged crime occurred for further investigation and prosecution with reports being made available to the Attorney General and other appropriate state agencies. The disciplinary committee is entitled to investigate such acts. If the accused is incarcerated at the time of the hearing, he or she can appear by



video camera. All court dates have to supersede dates for council disciplinary hearings, in which case, the disciplinary committee shall reschedule.

6. f. If an attendant is found in violation of complaint filed, the council can levy penalties against that individual, but the imposition of such action will be delayed if the decision is to be appealed, which has to be filed within 10 days of the original decision. The exception to this is if the workforce council refers the matter to the criminal justice system for investigation and prosecution, the legal process has to go forward while the administrative appeal progresses. Even if the administrative appeal exonerates the attendant, the finding does not override any court or criminal investigative process. Reports from the council investigation shall be made available upon subpoena from attorneys from either side for use at trial.

7. g. There are various penalties open to the council. The disciplinary committee can give the offender a warning in writing. Fines between \$100 and \$10,000 can be levied. In the all instances, unless an appeal has been filed, payment is expected by 30 days and 30 days after a failed appeal. The council can take the attendant's name off the directory either temporarily or permanently. The council can order the attendant attend counseling or psychiatric treatment if the individual is to keep serving people with disabilities. The council can also order further ethics or abuse training. A combination of sanctions is possible. If the attendant is a repeat offender who presents in front of the council's disciplinary committee, the penalties become more serious, until the third offence when the said committee must impose permanent expulsion from the directory and \$10,000 fine, and, depending on the circumstances, a report may be filed with the criminal justice system if such sanctions have not already occurred. The committee can repeat or increase severity of sanctions with repeat offenders as the disciplinary committee sees fit until the third time where the maximum penalties must be applied.

8. h. The council shall fine the attendant who is abusing substances while placing consumers or administrative consumers in potential or actual harm, for the first two offences, no less than \$100 and at a

maximum of 10,000, and suspend him or her from the directory for a period decided by the disciplinary committee. The disciplinary committee has the choice of suspending an attendant from the directory for a period of one to two years, or indefinitely, depending on the extent of the harm done to a consumer or administrative consumer and the severity of any legal penalties attached to the alleged incident. A third offence accompanied by actual or potential harmful circumstances to consumers or administrative consumers will result in a fine of no more than \$10,000 and indefinite suspension from the directory. If the attendant only fails a drug test, but does not endanger a consumer or administrative consumer, the council can only monitor that attendant through the ombudsman, cited paragraph 35hh of this section or in some other manner agreed to by the council. If the attendant passes drug tests for two years, the monitoring shall stop unless failure happens in the future. In order to become re-registered onto the directory after suspension, the personal care attendant has to submit documentation to the council and referred to the disciplinary committee for review and must provide evidence of recovery, such as going through a treatment program, having regular contact with a sponsor and any other supporting information that the disciplinary committee may consider helpful. Additionally, attendant must prove they did not harm a person with a disability, an elder, or a member of the public while under the influence of a substance, or during the commission of some other crime within the suspended time frame. The disciplinary committee may question involved individuals, choose to conduct a hearing, or decide the petition based on the written documentation provided. There can be opposing testimony allowed at that time. The disciplinary committee must decide on re-registration between 30 and 60 days of the petition. If the attendant did harm someone else while under the influence, the person is to be banned indefinitely from the directory. Whether someone keeps their job due to a failed drug test is between the employing individual or organization and the attendant.

9. i. Regarding illegal aliens, such individuals must be reported to the federal authorities whenever they are found in the system. Administrative consumers, surrogates and agencies will be held to this reporting requirement. If a complaint is filed with the workforce council against any individual or

human service agency claiming said entities knew that they had illegal aliens as personal care attendants, the disciplinary committee has the right to investigate. State penalties for illegal aliens working in the personal care attendant program is no less than \$10,000 and automatic suspension from the personal care attendant directory. The council must report such offenders to the federal authorities. Penalties for not reporting illegal aliens, is no less than \$10,000 and individuals and organizations may face other penalties based on federal statutes.

10. j. Administrative consumers are equally responsible for their conduct with the personal care attendant and can be brought before the disciplinary committee. A complaint by an attendant or someone that has legitimate concerns about sexual harassment, utilizing an attendant to perform an unlawful act or something that would harm the administrative consumer, or attendant. The penalties in this case are, written warnings, fines between \$100 and \$10,000 can be levied, mandatory skills training or mentoring, psychological therapy or psychiatric treatment, further ethics training, filing in probate court for a competency hearing to determine whether a surrogate should be involved or a recommendation to the legal authorities for further criminal investigation and possible prosecution. In the case of an administrative consumer perpetrating the abuse, it has to be proven that the act was not due to the person's disability, or any medical treatment he or she might have received for the individual to be responsible and in violation of the ethical code, which would require the application of sanctions

11. k. Surrogates are held to account and the sanctions for a personal care attendant applies to surrogates with the additional possibility of replacing offending surrogate in probate court with another individual to take over the surrogacy of the particular consumers who experienced maltreatment, such as negligence, or any other form of direct, or indirect abuse or criminal act committed by the prior surrogate such as utilizing an attendant to perform an unlawful act or something that would harm the administrative consumer, or attendant.

12. 1. The disciplinary committee may issue a fine between \$100 to \$10,000 for any contractors who violate ethics standards can be levied, contracts with the council may be severed, the state can sue those corporate entities for negligence, the disciplinary committee may recommend the agency found in violation and lose state funding, or that the state revoke their business license or a combination of these penalties can be applied. In which case, a hearing by the Governor's Council on Disability shall be conducted to perform a review of the allegations and give recommendations to the Governor, the Secretary of Elder Affairs, the Director of the Massachusetts Office on Disability and any other state agency necessary to carry out the sanctions.

13. m. Because any type of abuse or neglect shall be taken seriously, the disciplinary committee can levy a \$10,000 fine per incident to administrative consumers, personal care attendants, surrogates and contractors who hire attendants. Consumers or administrative consumers have to experience some type of primary or secondary abuse for such penalties to apply. If other abuses occur between contractor employees, attendants harming family members or surrogates of people with disabilities, or some other combination thereof, the council shall not investigate, therefore, making such issues matters for law enforcement. The perpetrator must abuse consumers or administrative consumers in one of the stated categories in order for the alleged offense to be investigated and heard by the disciplinary committee and associate penalties to be applied.

14. n. If a person being an employment reference on behalf of a prospective attendant and knew the person they were referring had character flaws or had background difficulty, and that attendant may have committed an illegal or unethical act against a consumer or administrative consumer, or some individual, or entity in the community, the person who is giving the reference may be accountable by the District Attorney where the administrative consumer or consumer resides. This rule applies also to union representatives of the personal care attendant union who may be recruiting attendants. In all cases, the council can refer the matter to the Attorney General for criminal investigation. The penalty for such an act is a \$5,000 fine and not more than one-year imprisonment, or another sentence, which is consistent

with other laws under the discretion of a criminal court. Anyone who employs or uses personal care attendants may keep lists of references for each attendant so that if there is a investigation, authorities can question those original supportive individuals. If it is found that such individuals were misleading in their references, the authorities have the right to apply the legal penalties described in this clause. The disciplinary committee of the council shall not be involved in such situation.

15. o. Any suspected ethical or unlawful act on, or related to the council, shall initiate an investigation from the attorney for the council, director, the Assistant Secretary of the EOHHS, Disability Division and the Attorney General. Such complaints shall be filed with the director who shall notify the Assistant Secretary of EOHHS, Disability Division and the council attorney, who will intern, notify the Attorney General. Formation of the committee has to occur within 72 hours of the complaint being filed and the investigation shall occur immediately with the Attorney General or his or her staff being included in the discussions. If one member, or more, commits corruption on the council, such persons shall be removed, at least temporarily, while investigations are conducted and completed. Council members and employees shall notify the director of their knowledge of a potential corruption by another member, or other individuals involved in the council, or they shall be subject to investigation and possibly be held legally liable. The council director shall remove the member by phone immediately followed by a letter to the accused within five days. While an internal investigation needs to occur within 30 days, the Attorney General may choose to initiate a criminal investigation simultaneously or wait until the internal investigation is completed, under his sole discretion. If the corruption resides with an employee of the council, and if it is discovered, that employee shall face either suspension or termination, or both, under the discretion of the director. The same procedures for reporting members to the Attorney General, will apply to any employees who have conflicts of interests or who have committed other wrongful acts against the council. The proceedings can go forward as long as it is within the statutes of limitations for the type of the suspected corrupt acts. The Attorney General shall conduct the investigation within 90 days to decide if the conflict of interest violated any state or federal law. Other

types of corruption shall be investigated and prosecuted in a similar manner. Such acts shall not appear before the disciplinary committee of the council.

16. p. When the director discovers any type of corruption, however this occurs, he or she shall follow these procedures. If the council director does not follow these procedures, or is involved in a conflict of interest or other corruption, reported by any person or entity, the same rules in paragraph 15o apply, except any initial report of suspected criminal or unethical behavior on the part of the director has to be reported to the Assistant Secretary of the EOHHS, Disability Division, where this official shall take control of the council until the director is either cleared and reinstated or a new replacement is found due to termination of the director. Under section four of this act, the Auditor has the right to also conduct an emergency administrative audit if such circumstances emerge. If the official who made the appointment or the nominating agency or organization is suspected of being involved in the corruption or not thoroughly vetting the candidate, these entities shall be investigated as well with possible civil or criminal penalties being assessed. The member or employee who had the conflict of interest or committed some other type corruption during an investigation, shall be reported to the council director and attorney for investigation. If a member of the council finds himself or herself in a conflict and resigns because he or she cannot resolve it, the possible consequences may not occur.

17. q. In the case of corruption within the standing disciplinary committee involving a particular case, or the case being investigated presents a conflict of interest for most members of the committee, the council director shall ask the Attorney General to appoint an independent disciplinary committee based on applications from the file at the EOHHS of seven people from the community, based on paragraph two b who are disabled, personal care attendants, or who are family members who are disabled, to investigate the ethical violations. The Attorney General may also choose people of his own, provided such people represent the population with disabilities or personal care attendants in some way and has no current association with the council. The attorney for the council shall be present throughout the investigation, to give legal advice to the panel, applying the general rules according to this act and other laws of the

commonwealth. The independent disciplinary committee can also have ethical advice from the expert working with the ethics committee according to regulations found in paragraph two b of this section. The independent disciplinary committee shall operate within the rules of this section for the regular disciplinary committee, based on paragraph two b and shall render a decision within 90 days, cited in paragraph of four d. This independent disciplinary committee can apply the penalties outlined in paragraphs seven g – 14n and 18r. The independent disciplinary committee shall be disbanded once the investigation is over. Any member of the council, its employees, or members of subcommittees of the council can be disciplined in this manner for suspected corruption. Any appointing political official or nominating agency or organization, which may have committed corruption, shall not be investigated by the council's disciplinary committee, but the Attorney General may investigate and prosecute such individuals and entities, under state and federal laws that pertain to such unlawful acts.

18. r. If one or more members of the council or its employees are found guilty of in court of breaking state or federal law, through some type of corruption that has taken place on the council, the Attorney General may ask for those penalties under those statutes. In this case, the guilty parties shall be dismissed from the council in the same manner as the removal outlined in paragraph 13m of this section.

19. s. In the case of any violations on an administrative audit, the audit team or the Auditor can refer the matter to the Attorney General for criminal investigation. A hearing by the Governor's Council on Disability shall be conducted to perform a review of the allegations and give recommendations to the appointing officials, cited in section three, paragraph one.

20. t. There are two situations in which an ethics investigation, regarding corruption, conducted by the disciplinary committee, can run concurrently with a legal investigation: One, the alleged corruption might have violated both the law and council ethical guidelines. Two, the offence did not rise to the level of legal action or the person was legally cleared, but nevertheless, the alleged offence may have violated council ethical standards. If the disciplinary committee finds the person violated the code,

penalties are a letter of senture, fines up to \$10,000, termination from the council, or a combination of sanctions can be pursued. Senture shall be sent to the accused, the council, the appointing official who appointed the accused member, the nominating agency or organization and the Governor. The fine shall be paid to the council with 30 days of notification, unless other arrangements are made, the fee shall be increased by 10% per month until payment is received.

21. u. If the council discovers through administrative audit, or other sources, that a prior member committed some type of corruption while on, or employed by the council, the council and the Attorney General shall initiate legal and ethical investigations with their potential consequences involved for the retired individual, outlined in paragraphs 16p, 17q and 18r, of this section.

22. v. Moreover, if members of the council, employees, or other entities involved in council business, fail to sign the ethics agreement of the Personal Care Attendant Quality Home Care Workforce Council, those individuals or entities shall not be allowed to serve and will be dismissed by the director if ethics agreements are not signed within 30 days of being given to the recipient. The notification outlined 13m shall be followed for these purposes.

23. w. In the case of an individual who is fined more than \$100, that individual is entitled to a payment plan provided by the Personal Care Attendant Quality Home Care Workforce Council, if they come under income guidelines set forth by the council, so that person can make payments toward the total amount. Corporate entities, serving as contractors, however, shall not take advantage of the same benefit. Whoever is being fined, or how the fee schedule is arranged, violators are to make payment within 30 days of a written decision. For every month of a missed payment, an additional fee of \$75, for individuals, and \$300 for agencies or corporate entities will be assessed. If payment is still not made within the agreed upon time frame, or the accused refuses to pay, the council can seek intervention, through its legal counsel and the Attorney General, and ask a court to garnish some percentage of the person's income until the fine is paid including interest. In cases where the person is incarcerated, the



1110 court may order a payment delay until release and the person is gainfully employed or the court can freeze  
1111 assets reaching the amount owed, or as close to it as possible.

1112 24. x. The personal care attendants, administrative consumers and surrogates shall maintain  
1113 mandatory trainings. Attendants shall offer proof of life saving skills if possible. If on the directory, any  
1114 such attendant who has not kept current shall be removed from the directory. For attendants that do not  
1115 keep current, the council may fine that person for one time \$150 after a time period designated by the  
1116 council. An ombudsman, cited in paragraph 33ff in this section, may encourage such training be  
1117 completed. The attendant may submit their name for the directory again once their training is upgraded.  
1118 For administrative consumers and surrogates must maintain current on ethics. Failure to do so within a  
1119 12 to 18 months of a new version of a code of conduct being released, a one time \$150 fine will be  
1120 assessed by the council and urging by an ombudsman to complete such training shall be initiated. Such  
1121 fines should not involve the disciplinary committee, but the individual assigned to handle fines, cited in  
1122 paragraph 38kk in this section shall be the one to submit the fines for missing mandatory trainings. The  
1123 council shall decide any other procedures needed to fulfill these requirements for 22v.

1124 25. y. Consumers under the age of 18 or individuals with intellectual  
1125 handicaps are exempt from complaints against them because of behavior difficulties or being under the  
1126 age of majority.

1127 26. z. The loosing side in the initial disciplinary case can request an independent administrative  
1128 appeal or review conducted by an appellate panel comprised of people with disabilities, personal care  
1129 attendants, law enforcement and other non-related members drawn from a random pool of individuals  
1130 who have volunteered to serve if called for a period of two years. The Governor and the Secretary of the  
1131 Department of Elder Affairs shall appoint two individuals each while the Director of the Office on  
1132 Disability shall appoint three with a magistrate presiding to be appointed by the judiciary when the proper  
1133 documentation is filed in the appropriate court of law by the council's attorney. Identification of these

members shall be kept confidential to protect any undue influences. The members of the appellate panel shall appointed at the same two year interval as the regular members are being appointed. Members of the appellate panel shall report any conflict of interest with the council, or the parties involved and excuse themselves immediately so the original appointing official who chose that member can select another member, following rules from paragraph two b in this section. In case of any corruption on the part of one or more officials, section three, paragraph five f shall apply, in that the Commissioner of the Massachusetts Rehabilitation Commission shall appoint three appellate members while the other two alternate officials, if needed, shall appoint two members each. The director shall notify the appropriate official(s) of need for alternate members at the proper time. The magistrate in charge of the proceedings has to sign off on the decision before the final report is issued. If the decision is unjust or unlawful, the magistrate may use his or her substitute judgment in the decision.

27. aa. The goal of the panel is twofold: To review the rules and procedures of the council and to ensure all members of the council, associated employees or contractors correctly followed the rules and procedures.

28. bb. The appeal will be filed with the council director, who will activate the panel within 10 days of the appeal being filed. The appealet panel will then hold their first meeting within 45 working days of that notification. The panel will then hold a hearing involving the administrative consumer(s) affected, their surrogates, if applicable, the council's governing members, employees and contractors or other agents of the council, or independent entities, or individuals, who were involved in the original complaint. There can be character or eyewitness testimony offered in front of the panel and a review of the case records will be undertaken. No new evidence, however, can be introduced that was not included in the first investigation.

29. cc. The appellate panel has 90 days to complete its investigation and write a

report with copies going to the administrative consumer and the attendant involved. The report will also be available to the council, the Governor, the Secretary of the Massachusetts Department of Elder Affairs and the Director of the Massachusetts Office on Disability. The judgment of the appeal panel either can uphold the prior ruling or override it. If rules or procedures need to be changed, the appeal panel may note it in their recommendations. If the accused is still found in violation, the appeals panel will not adjust the prior recommended sanctions. Once the ruling is made, there can be no other appeals in court or to other entities.

30. dd. All sides may have legal representation in such disciplinary proceedings and attorneys are allowed to represent their clients in any outside interviews. In hearings, the members of the disciplinary committee, appellate panels, and independent disciplinary committee do most of the questioning although attorneys for the opposing sides are allowed to perform direct and cross-examination of witnesses or make oral arguments on behalf of their clients. Legal counsel will be provided, depending on income level, to be determined by the council.

32. ee. If someone on the appellate panel or audit committee does not report a conflict of interest and remove themselves from the investigation, or identity of such members is unlawfully revealed, the person or entity who committed such acts, shall be charged a \$10,00 fine and must not be chosen for council or related duty again. Such a penalty shall be executed by the Attorney General's office in a court of law. Further more, any person who attempts to influence the outcome of any disciplinary procedures set forth in this section, and in section four, by having unlawful contact with members disciplinary committees, audit teams, or appellate panels, or through falsification of evidence, shall be referred to the Attorney General for possible criminal investigation and prosecution, under criminal statutes chosen by his or her office. Members of these committees must not engage in such behavior, either alone or with others, to influence the outcomes of cases outside of normal committee procedures, and must report anyone who approaches them to attempt to influence their opinion, or use

1181 them in anyway to influence the outcome of the investigation. Failure to report, and, if discovered may  
1182 result in the same investigation by the Attorney General and related penalties.

1183 33. ff. Penalties from other state and federal laws may be applied, if those  
1184 statutes were violated as well and if the determination is made by the correct authorities. The Personal  
1185 Care Attendant Quality Home Care Workforce Council or associated investigators shall make the  
1186 appropriate referrals and recommendations to those law enforcement agencies for a further processing

1187 34. gg. If the Auditor's office is corrupt, affecting reviews of the council, the  
1188 Attorney General shall investigate and apply the appropriate legal penalties, if the courts agree. The  
1189 Attorney General shall do the same with the three appointing officials, if their offices are corrupt and  
1190 affect the council adversely. In terms of the Attorney General's office being corrupt affecting council  
1191 performance, the Governor, the Joint Committee of the Judiciary and the Joint Committee of Health and  
1192 Human Services shall investigate and exercise their rights under the Massachusetts State Constitution, in  
1193 dealing with such circumstances.

1194 35. hh. The council shall hire ombudsmen to serve in different parts of the state to work with  
1195 individuals in the community namely people with disabilities, surrogates, family members of the person  
1196 needing care and personal care attendants. The ombudsman will work with anyone having minor day-to-  
1197 day problems with attendants, providers, consumers, administrative consumers, family members, or  
1198 surrogates. The ombudsman will receive complaints and he or she can make a determination within  
1199 seven to 14 days of receiving such reports whether the incident(s) alleged warrant a full disciplinary  
1200 investigation. The ombudsmen are mandated reporters pursuant to M.G.L. Chapter 19c, sections 5, 10 of  
1201 the state code and must report all suspected cases of abuse to law enforcement and any other appropriate  
1202 state investigative agencies. In the case of emergency calls to the ombudsman must visit the victim  
1203 within five hours and must notify authorities where the victim resides immediately. Whenever possible,  
1204 however, the ombudsman will attempt mediation to solve smaller disputes with the people involved and

1205 whoever else is needed to be present. The personal care attendant can have some kind of representation at  
1206 such meetings if they so desire. Moreover, if the attendant has the problem, he or she can initiate the  
1207 same type of meeting with their administrative consumer or the surrogate with the ombudsman and a  
1208 representative or other advocates being present. If however, an investigation is warranted, the  
1209 ombudsman will refer the matter to the workforce director who will then form a disciplinary committee.  
1210 The disciplinary process should only be done when there are serious allegations, not for disputes, which  
1211 could be solved in other ways.

1212           36. ii. If other entities such as law enforcement or social service  
1213 agencies receive complaints regarding the personal care attendant program, such agencies shall share that  
1214 information within two days of obtaining the complaint so the council can begin its own investigation.

1215           37. jj. The council shall make information available to every  
1216 administrative consumer, surrogate and personal care attendant registered in the personal care program  
1217 regarding complaints procedures. The workforce council shall write a summary of all disciplinary  
1218 proceedings and their outcomes for the previous two-year period, omitting any identifying information, in  
1219 biannual performance review reports. Information that is described in this chapter will disclosed and  
1220 summarized for this purpose.

1221           38. kk. The council shall provide transportation for people with disabilities,  
1222 who require it, to and from disciplinary committee and appellate panel meetings. The members of such  
1223 committees can consider holding hearings at a location closer to the opposing parties. A third option is  
1224 to arrange teleconferences or videoconferences with the participants. Moreover, the council shall provide  
1225 any special accommodations, which a person with a disability requires to participate fully and function  
1226 during the disciplinary hearing, complying with purposes of this act

1227           39. ll. Any Massachusetts citizen can report any union abuse. Investigations of this type are  
1228 beyond the scope of the disciplinary procedures of the council and must be handled by the Attorney  
1229 General. If the union is found in violation of section three, in any manner, the basic penalty shall be a  
1230 fine of \$10,000 per offence to the union and any individual union members or staff involved, plus any  
1231 other fines from other laws that might have been violated. If the entities mentioned in paragraph 23j in  
1232 section three violate the stated privacy rules, the disciplinary committee cannot hear such a case, but a  
1233 state court can apply the \$10,000 per violation to such entities and individuals employed by such  
1234 organizations who were involved in disclosing confidential information. Additional fines of other state or  
1235 federal privacy laws could also be applied to such defendants as well. The same penalties, in the same  
1236 manner, shall be applied to any other persons not mentioned in paragraph 23j in section three. Depending  
1237 on the circumstances, the Attorney General may file criminal charges against union leaders and other  
1238 members if he or she thinks it is necessary. Any unsolicited visits from union representatives to private  
1239 residences shall be treated as trespassing under the law, if reported. Citizens who are harassed by the  
1240 union, may apply for restraining orders in a court of law with specified penalties at the discretion of the  
1241 court. Any inappropriate interaction between politicians and the union, cited in section three, paragraph  
1242 13h, if discovered, shall be investigated and prosecuted by the Attorney General under laws deemed  
1243 appropriate. The Legislative Joint Committees on Ethics, and, Health and Human Services, shall also  
1244 investigate and determine appropriate penalties or other actions.

1245           40. mm. There are civil liability prohibitions in this act under certain conditions. An attendant  
1246 cannot sue any administrative consumer or surrogate independently. The union cannot hold said parties  
1247 responsible in a court of law on the behalf of an attendant for any reason. There is no civil liability for the  
1248 council, its members, subcommittees, or advisors. The personal care attendant union and any other entity  
1249 that has contractual obligations to the council cannot be held liable civilly other than what is prescribed in  
1250 this act, unless other laws supercede according to a court of law. Whereas, only the penalties provided in  
1251 this act shall be applied to all parties mentioned except under certain conditions. Attendants, surrogates

and human service agencies can be held civilly liable beyond the consequences mentioned in this act in accordance with Massachusetts state law. This can only apply in cases of serious injury, such as brain damage, sensory disability, bodily mutilation, psychological trauma, disease process, or wrongful death caused by a personal care attendant or some decision or omission that placed the consumer or administrative consumer in jeopardy. Other than those instances where the quality of life for consumers or administrative consumers is permanently altered and degraded will lawsuits independent of council discipline will be allowed to go forward in a court of law, unless a court decides other laws supercede this act. A complaint with the council's disciplinary committee and other investigative agencies must be filed first and investigative processes must be completed before any independent civil suits can be filed in a court of law.

41. nn. Upon enactment of this act, the council has 18 to 24 months to develop the policies, procedures and logistics, necessary to implement the directives set forth in this section.

#### Section 8: Amendment Requirements

##### Amendments to section 2 of Chapter 268 (2006)

1. Add section 36.a. Sections 2-8 of this act state amendments to Chapter 268 (2006) only for the targeted clauses mentioned, leaving the rest of the law intact. Thus, these amendments shall apply to Chapter 118G, through the Personal Care Attendant Quality Home Care Workforce Council Law (2006).

2. b. This act will go into effect immediately upon enactment although it will take maximum of 18 to 24 months after enactment to fully implement the regulations in certain sections.